

# NEW JERSEY DIVISION OF TAXATION

## TECHNICAL BULLETIN

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<b>DISTRIBUTION:</b>	<b>C, INCLUDING FIELD</b>	<b>TB-57</b>
<b>FOR RELEASE:</b>	<b>INTERNAL ONLY _____</b>	<b>ISSUED: 9-26-05</b>
	<b>OUTSIDE DIVISION <u>  X  </u></b>	
<b>TOPIC:</b>	<b>ESTIMATED GROSS INCOME TAX PAYMENT REQUIREMENTS ON SALES OF NEW JERSEY REAL PROPERTY BY NONRESIDENTS</b>	

### **P.L. 2004, c. 55, as amended by P.L. 2005, c. 20**

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P.L. 2004, Chapter 55, signed into law June 29, 2004, and effective August 1, 2004, and as amended by P.L. 2005, c. 20, signed into law January 19, 2005, effective retroactive to August 1, 2004 supplements the Gross Income Tax Act by requiring nonresidents who derive income from the sale of real property in this State to pay estimated gross income tax. The law states that “A nonresident taxpayer shall estimate the gross income tax due on a form prescribed by the director, using an estimated tax rate that is equal to the highest rate of tax for the taxable year provided in N.J.S.A. 54A:2-1. The estimated tax due shall equal the gain, if any, multiplied by that rate. The amount of gain used in the computation shall equal the amount of gain reportable for federal income tax purposes for the taxable year, but the estimated tax payment shall not be less than 2% of the consideration for the sale or transfer stated in the deed affecting the conveyance.” The law further states that “a nonresident taxpayer who is a seller or transferor of real property within this State shall file the estimated tax form, whether or not they have a gain on the sale or transfer.” The law also prohibits a county recording officer from recording or accepting for recording any deed for the sale or transfer of real property unless accompanied by an appropriate form and instructions as prescribed by the Director of the Division.

The following are procedures and guidelines that may be followed in implementing the above law.

In order to have a deed recorded, one of the following forms needs to be completed by the seller(s)/grantor(s) (or, in the case of the GIT/REP-4 or 4A, usually the buyer(s)/grantee(s)). Forms can be found at <http://www.state.nj.us/treasury/taxation/>, then click on Forms, [Print/Download Tax Forms](#), [Gross Income Tax Returns](#), and then scroll down to the table of forms. Their exact sites are also shown below:

1. GIT/REP-1. This is completed by the non-resident seller(s)/grantor(s) and given to the settlement agent (usually the buyer's/grantee's atty. or title co. agent) at closing, along with the appropriate payment as specified above. The form(s), payment(s), and deed are then filed with the appropriate County Clerk by the closing/settlement agent. The form can be downloaded at [http://www.state.nj.us/treasury/taxation/pdf/other\\_forms/tgi-ee/gitrep1.pdf](http://www.state.nj.us/treasury/taxation/pdf/other_forms/tgi-ee/gitrep1.pdf).

2. GIT/REP-2. In those instances where the non-resident seller(s)/grantor(s) wish to make their payment prior to closing, this form is completed by the non-resident grantor at a Division field office. This form can be viewed on our website in a SAMPLE FORMAT ONLY at [http://www.state.nj.us/treasury/taxation/pdf/other\\_forms/tgi-ee/gitrep2.pdf](http://www.state.nj.us/treasury/taxation/pdf/other_forms/tgi-ee/gitrep2.pdf). The actual form must be obtained and completed at the field office (except in instances where payment is sent in error directly to Division offices in Trenton as discussed below). GIT/REP-2 forms are not issued unless an estimated gross income tax payment is being submitted. Upon receipt of payment, the form will be stamped with the Division's raised seal and act as a receipt for the seller(s)/grantor(s) to give to the settlement agent at closing and be forwarded to the appropriate county clerk in order to record the deed. To find the nearest field office, you may call the Division's taxpayer customer service center (8:30 am – 4:30 pm, Mon. – Fri.) at (609) 292 – 6400 or by visiting our website at <http://www.state.nj.us/treasury/taxation/>, click on About the Division, then click on Regional Offices which will provide the list of field office locations.

When a nonresident seller has sent their GIT/REP-1 form with payment to the Division of Taxation in error, the **seller or his/her written authorized representative** must write to the Division of Taxation, Individual Tax Audit Branch, P.O. Box 288, Trenton, NJ 08695, requesting a GIT/REP-2 form. A copy of the deed, settlement statement, completed & signed GIT/REP-1 form, power of attorney or letter of authority and a copy of the cancelled check showing proof of payment must be included in order to process the request. Once receipt of payment has been verified, a GIT/REP-2 form with the Division's raised seal will be issued to the seller in order for the deed to be recorded with the appropriate county clerk.

3. GIT/REP-3. This form lists eight exemptions which by statutory law or policy exclude the grantor from the prepayment requirements of the tax. It is to be completed by the seller(s)/grantor(s) and is given to the settlement agent at closing for filing with the deed. The GIT/REP-3 form can be downloaded at [http://www.state.nj.us/treasury/taxation/pdf/other\\_forms/tgi-ee/gitrep3.pdf](http://www.state.nj.us/treasury/taxation/pdf/other_forms/tgi-ee/gitrep3.pdf).

In addition to the exemptions listed on the GIT/REP-3, there are other situations, noted below, wherein no tax prepayment is required for which other forms are to be filed.

4. GIT/REP-4. This form, commonly called a waiver form, should be completed by the buyer(s)/grantee(s) in those situations where the deed is "ancient" (i.e. executed and transacted prior to the effective day of the law, August 1, 2004). This form is not signed by the buyer(s)/grantee(s). In order to obtain the waiver, the buyer(s)/grantee(s) or their attorney/title company, must forward a brief explanatory cover letter to the Division's Regulatory Services Branch, P.O. Box 269, Trenton, N.J. 08695-0269, along with a copy of the deed HUD-1 (RESPA) statement, verifying the transaction date, where conveyance involved an actual sale. The form can be downloaded at [http://www.state.nj.us/treasury/taxation/pdf/other\\_forms/tgi-ee/gitrep4.pdf](http://www.state.nj.us/treasury/taxation/pdf/other_forms/tgi-ee/gitrep4.pdf).

There are other limited situations where the GIT/REP-4 form is used:

A. Relocation company transactions where an employee (often having moved out of state) is transferred by his company and "sells" his property to the relocation company (for which the employee would have had to have normally completed a GIT/REP-1 form with payment unless exempt under one of the exemption provisions listed in the GIT/REP-3 form). The company (often out of state) then finds a buyer and conveys for the same price. It is clear that in such a transaction, the law was not meant to apply. The company completes the GIT/REP-4 form as the owner and sends the form to the Regulatory Services Branch.

B. There may be from time to time other kinds of situations that arise for which the above reasons for granting a waiver do not apply, yet in which the granting of a waiver seems appropriate. Such situations should be referred to the Regulatory Services Branch for resolution on a case by case basis.

Upon receipt of the GIT/REP-4 form, the Regulatory Services Branch will make a determination based upon the required documentation submitted. The Division of Taxation will either approve the request by affixing the Division's raised seal to the form and return it to the buyer(s)/grantee(s) to be forwarded to the appropriate County Clerk for recording with the deed, or send a rejection notice.

5. GIT/REP-4a. This form is to be used for corrective deed situations such as where the originally filed deed had a typographical or spelling error, the metes and bounds description was incorrect, and the like. It is signed and dated by the buyer(s)/grantee(s) and filed with the deed. The form can be downloaded at [http://www.state.nj.us/treasury/taxation/pdf/other\\_forms/tgi-ee/gitrep4a.pdf](http://www.state.nj.us/treasury/taxation/pdf/other_forms/tgi-ee/gitrep4a.pdf).

There are other types of transactions for which no form need be filed with the deed. These are where the deed is a sheriff's deed being given to a buyer in a foreclosure sale (see <http://www.state.nj.us/treasury/taxation/pdf/sheriffsales.pdf>) or a bankruptcy trustee's deed in bankruptcy action (see <http://www.state.nj.us/treasury/taxation/pdf/banktrustee.pdf>).